Case No. 17-1351

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,

Plaintiffs and Appellees,

v.

DONALD J. TRUMP, ET AL.,

Defendants and Appellants.

Appeal from the United States District Court
for the District of Maryland, No. 17-cv-00361 (Chuang, J.)

**BRIEF OF *AMICI CURIAE*
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW;
CENTER FOR REPRODUCTIVE RIGHTS;
SOUTHERN COALITION FOR SOCIAL JUSTICE;
NATIONAL CENTER FOR LESBIAN RIGHTS;
JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW;
CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW;
MISSISSIPPI CENTER FOR JUSTICE; AND
THE WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS
AND URBAN AFFAIRS
IN SUPPORT OF APPELLEES AND
AFFIRMANCE OF PRELIMINARY INJUNCTION**

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INTEREST OF AMICI AND SUMMARY OF ARGUMENT

Amici, the Lawyers' Committee for Civil Rights Under Law, the Center for Reproductive Rights, the Chicago Lawyers' Committee for Civil Rights Under Law, The Judge David L. Bazelon Center for Mental Health Law, the Mississippi Center for Justice, the National Center for Lesbian Rights, the Southern Coalition for Social Justice, and the Washington Lawyers' Committee for Civil Rights and Urban Affairs, are national and regional civil rights groups interested in the promotion of civil liberties throughout the country, and elimination of discrimination in whatever form.

In promotion of those interests, *amici* respectfully submit this brief to advance two separate but related arguments in support of affirming the district court's preliminary injunction.[1] First, *amici* submit that the balance of equities and public interest weigh heavily in favor of enjoining President Trump's March 6, 2017 Executive Order, "Protecting the Nation From Foreign Terrorist Entry into the United States" (the "Executive Order"), as the Executive Order improperly promotes social categorization and stereotyping that endangers the lives and well-being of individuals of the Muslim faith. Second, *amici* note that the Equal

[1] *Amici* submit this brief pursuant to Fed. R. App. P. 29(a)(2); all parties have consented to its filing. No party's counsel authored the brief in whole or in part; no party or party's counsel contributed any money that was intended to fund preparing or submitting the brief; and no person, other than *amici curiae*, their members and their counsel, contributed money that was intended to fund preparing or submitting the brief.

Protection Clause historically has been a safeguard against precisely government action such as this, which evinces animus against a particular segment of the population. Even where courts have reviewed such governmental action under a "rational basis" test, they have found the law to violate the Constitution's equal protection guarantee. Here, the evidence demonstrates that, regardless of the Government's *post-hoc* explanations, it was motivated by animus toward Muslims and those born in the targeted majority-Muslim countries, rather than by any demonstrable national security concerns. This motivating animus is not a legitimate government end under any level of scrutiny. Accordingly, the Executive Order violates the Equal Protection Clause, and the district court's injunction may also properly be affirmed on that basis.

I. SOCIAL CATEGORIZATION AND STEREOTYPING CREATES DANGEROUS CONDITIONS FOR MEMBERS OF MINORITY GROUPS.

A. Stereotyping Minority Groups Creates a Climate for Discrimination.

The balance of equities and public interest in this case weigh in favor of enjoining the Executive Order due to the discrimination it promotes. As the U.S. courts have long recognized, laws such as the Executive Order promote social categorization and stereotyping of Muslims that leads to the endangerment of the lives of those who practice Islam, a minority religion.

The Supreme Court has repeatedly stated that discriminatory stereotypes impact decision making. *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2522 (2015) (recognizing disparate impact liability in housing decisions to prevent segregated housing patterns that might otherwise result from the role of "covert and illicit stereotyping"); *see also Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (recognizing the role that sex stereotyping played in employment discrimination case, explaining "stereotyped remarks can certainly be evidence that gender played a part" in an adverse employment decision) (superseded by statute as stated in *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994)); *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971) (holding that absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability); *accord Miller-El v. Dretke*, 545 U.S. 231, 268 (2005) ("Subtle forms of bias are automatic, unconscious, and unintentional and escape notice, even the notice of those enacting the bias.") (citations omitted).

The circuit courts also recognize that social categorization and stereotyping often create the conditions for discrimination in areas such as provision of housing, employment decisions, and police motivations. *See Hassan v. City of New York*, 804 F.3d 277, 306 (2d Cir. 2016) (rejecting "appeals to 'common sense'" which "might be infected by stereotypes" as sufficient to justify police surveillance of

Muslim individuals, business, and institutions) (quoting *Reynolds v. City of Chicago*, 296 F.3d 524, 526 (7th Cir. 2002)); *Ahmed v. Johnson*, 752 F.3d 490, 503 (1st Cir. 2014) (finding "lack of explicitly discriminatory behaviors" does not preclude a finding of "unlawful animus" in an employment discrimination case because "unlawful discrimination can stem from stereotypes and other types of cognitive biases, as well as from conscious animus") (quoting *Thomas v. Eastman Kodak Co.*, 183 F.3d 38, 64 (1st Cir. 1999)); *United States v. Stephens*, 421 F.3d 503, 515 (7th Cir. 2005) (recognizing that racial stereotyping continues to play a role in jury selection and the outcome of trials); *Eastman Kodak*, 183 F.3d at 42 (holding Title VII's ban on "disparate treatment because of race" includes "acts based on conscious racial animus and . . . employer decisions that are based on stereotyped thinking)).

Stereotyping of all kinds can be exacerbated through a psychological triggering phenomenon known as "priming." Priming occurs when "subtle influences . . . . increase the ease with which certain information comes to mind." Richard H. Thaler & Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* at 69 (2009). In the case of racial stereotyping, which shares many attributes with stereotyping of Muslims, priming an individual with race-based stereotypes can influence later decisions by that individual. Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes about*

Adolescent Offenders, 28 L. & Hum. Behav. 483, 489 (2004). Social science research repeatedly demonstrates that individuals have a persistent tendency to defer blindly to priming from authority figures. *See* Stanley Milgram, *Behavioral Study of Obedience*, 67 J. Abnormal & Soc. Psychol. 371, 375-76 (1963). The connection between state sanctioned discrimination and private harm is clearest in the Court's decisions in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) and *Loving v. Virginia*, 388 U.S. 1 (1967), where the Supreme Court recognized that discrimination with the sanction of law raises unique and particular dangers.

B. The Executive Order Is Based on Stereotypes About Muslims as "Anti-American" and "Terrorists."

As in the cases cited above, the Muslim ban bears the imprimatur of the Executive Branch, engendering precisely the type of discriminatory harms that the Court has held cannot withstand constitutional muster. Since December 7, 2015, when then-candidate Donald Trump issued a written statement calling for a "total and complete shutdown on Muslims entering the United States" in the wake of the terror attack in San Bernardino, California, a "Muslim ban" has been a major item on his policy agenda.[2] At that time, his campaign explained that "there is great

[2] Helena Horton, *Muslim ban statement 'removed' from Donald Trump's website*, The Telegraph (Nov. 10, 2016), http://www.telegraph.co.uk/news/2016/11/10/muslim-ban-statement-removed-from-donald-trumps-website/.

hatred towards Americans by large segments of the Muslim population." He also characterized the need for a bar on Muslim entry into the United States as a way to stop our country from being the "victims of horrendous attacks by people that believe only in Jihad."[3]

Mr. Trump's categorization of Muslims has been ongoing. On January 4, 2016, the Trump campaign premiered its first television advertisement. That advertisement told viewers that Trump was "calling for a temporary shutdown of Muslims entering the United States" until doubts about "radical Islamic terrorism" can be "figure[d] out."[4] The link the Presidential candidate drew between "radical Islamic terrorism" and all individual Muslims entering the United States could not be more strongly established. Subsequently, candidate Trump, in a major foreign policy speech on April 27, 2016, stated that "the struggle against radical Islam also takes place in our homeland. . . . We must stop importing extremism through senseless immigration policies."[5]

Just one week after his Inauguration, President Trump acted to fulfill his campaign pledge. On January 27, 2017, he signed Executive Order 13,769, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." 82 Fed. Reg. 8977 (Jan. 27, 2017). Among the immigration restrictions contained in Executive Order 13,769 was a temporary ban of all nationals from seven majority-Muslim countries from entering the United States: Iran, Iraq, Syria, Sudan, Yemen, Libya, and Somalia.

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[3] *Id.*

[4] Jeremy Diamond, *Donald Trump: Ban all Muslim travel to U.S.*, CNN (Dec. 8, 2015), http://edition.cnn.com/2015/12/07/politics/donald-trump-muslim-ban-immigration/.

[5] N.Y. Times, *Transcript: Donald Trump's Foreign Policy Speech* (April 27, 2016), https://www.nytimes.com/2016/04/28/us/politics/transcript-trump-foreign-policy.html?_r=0.

While many surrogates of the current Administration pushed back at the characterization of E.O. 13,769 as a "Muslim ban," the President embraced it. He told the public via Twitter that "[c]all it what you want, [E.O. 13,769] is about keeping bad people (with bad intentions) out of country!"[6] Throughout his campaign, and now in office, President Trump has voiced his view of Muslims as threats to national security.

After multiple courts enjoined enforcement of E.O. 13,769, the Trump Administration announced plans to revise that order. On March 6, the Administration issued E.O. 13,780. 82 Fed. Reg. 13,209 (Mar. 9, 2017). The revised Executive Order preserves several core provisions of the prior Order, including the suspension of the United States Refugee Admissions Program for 120 days, and the suspension of entry into the United States of nationals of six of the majority-Muslim countries designated in E.O. 13,769 for 90 days. *See* §§ 6(a);

[6] Louis Nelson, *Trump on immigration order: Call it what you want — it's about keeping 'bad people' out*, Politico.com (Feb. 1, 2017), http://www.politico.com/story/2017/02/trump-immigration-order-ban-no-ban-234477.

2(c). Like E.O. 13769, the new Order targets only majority-Muslim countries.

This official action of marking a social group, Muslims, as a dangerous "fifth column," only aggravates societal biases against Muslims in this country. It creates conditions where violence against Muslims is seen as more acceptable because they are perceived stereotypically as "bad people." A "sample of U.S. citizens on average viewed Muslims and Arabs as not sharing their interests and stereotyped them as not especially sincere, honest, friendly, or warm." Susan T. Fiske, *et al*, Policy Forum: Why Ordinary People Torture Enemy Prisoners, *Science*, 206, 1482-1483 (Nov. 26, 2004). More recent social science detailing the administration of "implicit association tests" demonstrates both the already-existing climate of prejudice against Muslims and Arabs and the unconscious nature of that bias: "Non-Arab and non-Muslim test takers manifested strong implicit bias against Muslims. These results are in sharp contrast to self-reported attitudes." C. Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 Wash. U. J. L. & Pol. 71, 93 (2010). In 2011, the Pew Research Center surveyed Western cultures to determine the characteristics they associate with people in the Muslim world. That survey found that about half of respondents characterized Muslims as "violent," and more than half characterized Muslims as "fanatical."[7]

[7] Pew Research Center, "Muslim-Western Tensions Persist" (July 21, 2011) (online at: http://www.pewglobal.org/2011/07/21/muslim-western-tensions-persist/#) (viewed Mar. 14, 2017).

The Executive Order exacerbates already existing prejudices against Muslims.

C. **Government Legitimization of Islamophobic Stereotypes Has Encouraged Violence Against Muslims, and Inhibited Millions of Muslims in the Practice of Their Religion.**

There can be no doubt that, given its origin and history, the Executive Order is based on social categorization of Muslims as "anti-American," "terrorists," and those with "hatred for Americans." In this case, President Trump's repeated, unsubstantiated claims that Muslims are dangerous, and should be barred from entering the country, are just the "cue" needed to release other suppressed discriminatory and violent beliefs against Muslims. The President's deliberate stereotyping of Muslims as "dangerous" and "terrorists" and his ban on the immigration of Muslims into the country, places an official "imprimatur" on those stereotypes, magnifying their effect.

When someone in a position of authority, as President Trump, categorizes Muslims as dangerous and terrorists, he creates the message that Muslims are "outsiders" and not full members of the political community. In *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 309 (2000), the Court found unconstitutional a school sponsored religious message, delivered over the school's public address system, by a speaker representing the student body, under the supervision of the school faculty, and pursuant to a school policy. The Court's reasoning was based on its view that the school policy created two classes of people—those who adhered to the favored religion, and those who did not. *Id.*

The President's strong and consistent support of what he calls a "Muslim ban" similarly sends the message that those who adhere to Islam as their religion are not part of American society, as opposed to Christians and non-Muslims, who are favored by the ban. In doing so, he "send[s] a message to non-adherents [to the Christian faith] that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J. concurring). The Executive Order and the President's statements characterize Muslims as homogenous and a national threat and engender a climate conducive to violence against people seen as Muslims.

In the short aftermath of the Executive Order and its predecessor, E.O. 13,769, and their chaotic implementation, anti-Muslim hate crimes have flourished. The February 22, 2017 shootings of Srinivas Kuchibhotla, Alok Madasani, and Ian Grillot in Olathe, Kansas is the most horrifying example of the social categorization of Muslims as enemies of the American people. Kuchibhotla and Madasani, two engineers at a local technology company, and both Indian immigrants to the United States, had gathered with co-workers at a bar near their office to watch a local college basketball game. Also at that bar was Adam Purinton, a 51-year-old U.S. Army veteran who mistook both Kuchibhotla and

Madasani as Iranians (which is one of the nationalities categorized by the Executive Order and its predecessor as barred from entry into the United States). Purinton approached and shot at Kuchibhotla and Madasani, telling them to "get out of our country!" Kuchibhotla was killed, and Madasani was wounded, in the incident. Ian Grillot, a patrolman present at the scene, was wounded while attempting to intervene. Purinton fled across the state border into Missouri, telling a bartender in a second bar that he needed to hide out because he had just shot two Iranians. Putting aside Purinton's stereotyped view that his victims were Iranians simply because they appeared to be foreign-born immigrants, his actions demonstrate the danger that social categorization can cause by exaggerating both the distance between in-groups ("real Americans") and out-groups ("Iranians"), as well the homogeneity of the out-group. As the Southern Poverty Law Center described the Olathe violence, "shocking hate crimes" "emerge not from a vacuum, but always from an environment that encourages and fosters [that] kind of violence."[8]

In addition, a rash of arsons and vandalism at mosques has plagued the United States surrounding the issuance of E.O. 13,769. On January 27, 2017, the

[8] David Neiwert, *Is Kansas' 'Climate of Racial Intolerance' Fueled by Anti-Muslim Political Rhetoric?*, Southern Poverty Law Center (Mar. 2, 2017), https://www.splcenter.org/hatewatch/2017/03/02/kansas%E2%80%99-%E2%80%98climate-racial-intolerance%E2%80%99-fueled-anti-muslim-political-rhetoric.

very date of the first order, a fire destroyed the Islamic Center of Victoria, Texas. On February 24, 2017, a blaze broke out in the entrance of the Daarus Salaam Mosque near Tampa, Florida. Combined with two arsons of mosques shortly before President Trump's inauguration, the United States has seen a surge of hate crimes against the Muslim community that is unprecedented. A spokesperson at the Southern Poverty Law Center told reporters that "four mosques being burned within seven weeks of each other" was "part of a whole series of dramatic attacks on Muslims."[9]

Other recent attacks on mosques in the United States include a rock thrown through a window of the Masjid Abu Bakr mosque in Denver, Colorado and vandals destroying the entrance sign at the Muslim Association of Puget Sound in Redmond, Washington. On March 5, 2017, a Sikh man was shot in his Kent, Washington driveway when a man approached him and said "go back to your own country."[10]

Rather than incitement of crime and hatred, the public interest in this county is best served by tolerance of different religions as the Constitution requires, and tolerance of both foreign-born and American-born adherents of different religions. The insidious effect of the Muslim ban does not impact merely those persons seeking to enter the United States from the six designated countries. By promoting malevolent social stereotypes and fueling violence against a minority, the Executive Order fundamentally threatens the American ideal of a diverse society made up of different of ethnic groups, races, and religions.

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[9] Albert Samaha and Talal Ansari, *Four Mosques Have Burned in Seven Weeks – Leaving Many Muslims and Advocates Stunned*, BuzzfeedNews (Feb. 28, 2017), https://www.buzzfeed.com/ albertsamaha/four-mosques-burn-as-2017-begins?utm_term=.rhx3bJRw6#.wcxEQDMKP.

[10] Matt Day, *Sikh man in Kent says he was told, 'Go back to your own country' before he was shot*, Seattle Times (Mar. 4, 2017), http://www.seattletimes.com/seattle-news/crime/kent-shooting-victim-says-he-was-told-go-back-to-your-own-country/.

II. THE EXECUTIVE ORDER IS NOT RATIONALLY RELATED TO A LEGITIMATE GOVERNMENT INTEREST

Having determined that plaintiffs/appellees were likely to prevail on the argument that the Executive Order violated the establishment clause, the district court did not reach the question of whether plaintiffs were likely to succeed on their equal protection claim. *Int'l Refugee Assistance Project v. Trump*, No. CV TDC-17-0361, 2017 WL 1018235, at *16 (D. Md. Mar. 16, 2017). However, this Court may affirm the district court's decision on alternative grounds. *United States v. Smith*, 395 F.3d 516, 519 (4th Cir. 2005) ("We are not limited to evaluation of the grounds offered by the district court to support its decision, but may affirm on any grounds apparent from the record."); *see also Am. Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 248 (3d Cir. 2003), *aff'd and remanded*, 542 U.S. 656 (2004) (affirming grant of preliminary injunction on different grounds). To the extent this Court reaches the equal protection question, *amici* agree with the position of Appellees below that the Executive Order is properly subject to, and fails, strict scrutiny. *Amici* write separately to argue that, even if the Executive Order were reviewed under rational basis review, the Order would still violate the Equal Protection Clause because it is motivated by an animus toward Muslims, and has no rational relationship to any legitimate governmental purpose.

A. **Animus Towards a Particular Group Is not a Legitimate Government Interest.**

Strict scrutiny under the equal protection clause applies where the Government singles out a suspect class or interferes with the exercise of a fundamental right. Where strict scrutiny applies, the challenged law is presumed to be invalid, and will survive judicial review only if the Government can show that it is "narrowly tailored" to further "compelling governmental interests." *See, e.g.*, *Johnson v. California*, 543 U.S. 499, 505 (2005) (citation and internal quotation marks omitted). In contrast, the rational basis standard treats governmental conduct as presumptively valid, placing the burden on the challenger to prove that such conduct is not "rationally related to a legitimate state interest." *See, e.g.*, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). As a result, the level of scrutiny is often a key factor in determining the outcome of an equal protection challenge to government action.

Government action fails even the more forgiving rational basis test, however, where it evinces animus directed against an unpopular group. As discussed below, where the history of a law reflects that it was motivated by animus against a particular class of people, the Court must give "careful consideration" to the government's stated justification for the law. *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013). In such circumstances, courts will apply a more searching review to the stated justifications for the policy to determine whether the policy is, in fact, motivated by impermissible animus. In his concurrence in *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), Judge Holmes explored the current state of what he called "animus" jurisprudence. *Id.* at 1097-1103 (Holmes, J., concurring). He concluded that:

> When a litigant presents a colorable claim of animus, the judicial inquiry searches for the foregoing clues. What happens when the clues are all gathered and animus is detected? The answer is simple: the law falls. Remember that under rational-basis review, the most forgiving of equal-protection standards, a law must still have a legitimate purpose.

Id. at 1103; *see also Windsor v. United States*, 699 F.3d 169, 180–81 (2d Cir. 2012), *aff'd*, 133 S. Ct. 2675 (2013) ("several courts have read the Supreme Court's recent cases in this area to suggest that rational basis review should be more demanding when there are historic patterns of disadvantage suffered by the group adversely affected by the statute") (citation and internal quotation marks omitted); *Am. Exp. Travel Related Servs. Co. v. Kentucky*, 641 F.3d 685, 691–93 (6th Cir. 2011) (noting that where "the legislation at issue was in fact intended to further an improper government objective," Supreme Court applied "rational basis with a bite") (internal quotation marks omitted).

Because animus is not a legitimate government interest, a long line of Supreme Court precedent holds that laws motivated by animus are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment and/or the Due Process Clause of the Fifth Amendment.

In *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court considered a Fourteenth Amendment challenge to a Texas statute that both denied state funding for the education of children not "legally admitted" into the United States and authorized school districts to deny enrollment to such children. The Court recognized that undocumented aliens did not constitute a suspect class, and that public schooling was not a Constitutional right. Nonetheless, in recognition of the importance of education to American society, the Court held that denying education to the entire class of undocumented alien children would be rational only if it furthered some substantial state goal. The Court then carefully reviewed the State's purported bases for the legislation, which included deterring unlawful immigration and avoiding "special burdens" on the State's educational system allegedly created by undocumented alien students. Finding that the legislation would not meaningfully further any of these goals, and that a desire to punish children was not a legitimate government interest, the Court struck down as irrational a law that promoted "the creation and perpetuation of a subclass of illiterates within our boundaries." *Id.* at 220, 230.

In *Cleburne*, the Court struck down a zoning ordinance that required special use permits for homes for individuals with Down syndrome, while not requiring such permits for various other residential facilities. The Court declined to treat those with an intellectual disability as a suspect or quasi-suspect class, and so applied rational basis review. *Cleburne*, 473 U.S. at 446. However, the Court conducted a searching review of the stated reasons for the ordinance, and concluded that none of them provided any legitimate basis for differential treatment of the affected group. *Id.* at 448-50.

One of the City's purported justifications for the permit requirement was concern about "negative attitudes" of nearby neighbors, and "fears" of elderly residents in the community. *Id.* at 448. In finding that this stated justification lacked a rational basis, the Court noted that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for people with mental disabilities differently from apartment houses, multiple dwellings, and the like." *Id*. Of particular relevance here, the Court stated that the Government "may not avoid the strictures of [the Equal Protection] Clause by deferring to the wishes or objections of some fraction of the body politic." *Id.*

In *Romer v. Evans*, 517 U.S. 620 (1996), the Court invalidated an amendment to the Colorado state constitution that nullified state laws prohibiting discrimination against same-sex couples. Because the Court did not view sexual orientation as either a suspect or quasi-suspect class, it applied rational basis scrutiny. The Court noted, however, the almost unprecedented nature of the challenged law in specifically targeting a particular class of individuals:

> First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.

Id. at 632. As the Court observed, "even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained." *Id*. The demand that "the classification bear a rational relationship to an independent and legitimate legislative end" serves to "ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." *Id.* at 632-33.

The Court observed that "laws singling out a certain class of citizens for disfavored legal status or general hardships are rare," and that a law denying one group of citizens the ability "to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." *Id*. at 633. Accordingly, the Court held that the amendment was "inexplicable by anything but animus toward the class it affects," and, as such, "lack[ed] a rational relationship to legitimate state interests." *Id*. at 632.

The Court has also struck down *federal* legislation targeted at particular groups as violative of the principles of equal protection incorporated into the Fifth Amendment's Due Process Clause. In *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), the Supreme Court found that a provision of the Food Stamp Act, which excluded non-family households, was passed to prevent hippies from participating in the program. Because hippies were not a suspect class, the Supreme Court applied rational basis scrutiny to the challenged provision. It nonetheless struck it down, reasoning that:

> if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest. As a result, a purpose to discriminate against hippies cannot, in and of itself . . . justify the [classification].

Id. at 534-35 (citation omitted). The Court recognized that, while "[t]raditional equal protection analysis does not require that every classification be drawn with precise 'mathematical nicety,'" the classification before it was "not only 'imprecise', it is wholly without any rational basis." *Id.* at 538.

Most recently, in striking down the Defense of Marriage Act ("DOMA"), the Supreme Court held that "[i]n determining whether a law is motivated by an improper animus or purpose, '[d]iscriminations of an unusual character' especially require careful consideration." *Windsor*, 133 S. Ct. at 2693 (quoting *Romer*, 517 U.S. at 633). The Court went on to state:

> DOMA's unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages. This is strong evidence of a law having the purpose and effect of disapproval of that class.

Id. at 2693. The Court concluded that DOMA violated the Equal Protection Clause because "the principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage." *Id.* at 2695.

B. The Executive Order Is Based on an Animus Toward Muslim Immigrants, Which Is not a Legitimate Government Interest.

Here, the record establishes that, just like the laws in *Moreno*, *Plyler*, *Cleburne*, *Romer*, and *Windsor*, the Executive Order was motivated by an impermissible animus against particular classes of individuals, and thus violates the most fundamental principles of equal protection.

First, the Executive Order restricts entry into the country and/or travel outside the country of individuals based solely on their national origin. Accordingly, even applying "the most deferential of [equal protection] standards," the Order's targeting of individuals from the identified countries would be permissible only if there exists a "relation between the classification adopted and the object to be attained." *Romer*, 517 U.S. at 632.

Second, although national origin distinctions may not seem as overtly pernicious in the area of immigration regulation, the background to the Executive Order reflects that the use of national origin designations was a pretext for targeting individuals practicing the Muslim faith. As noted earlier, while a candidate, President Trump advocated for a complete bar on Muslims entering the United States. *See Aziz v. Trump*, No. 1:17-CV-116-(LMB/TCB), 2017 WL 580855, at *4 (E.D. Va. Feb. 13, 2017). After many questioned the legality of his proposed Muslim Ban, then-candidate Trump telegraphed that, in order to accomplish his objective of banning Muslims while potentially subverting judicial review, he would use territories that were predominately Muslim as a surrogate for targeting Muslims directly. In response to a question about whether he had changed his position that Muslims should be banned, Trump stated "call it whatever you want. We'll call it territories, OK?" *Aziz*, 2017 WL 580855, at *4.

President Trump signed Executive Order No. 13,769 on January 27, 2017. Soon thereafter, Trump advisor Rudy Giuliani admitted that it was meant to effectuate the Muslim ban while circumventing judicial scrutiny. *Int'l Refugee Assistance Project*, No. CV TDC-17-0361, 2017 WL 1018235, at *4 (noting Giuliani's appearance on Fox News, where he "asserted that President Trump told him he wanted a Muslim ban and asked Giuliani to '[s]how me the right way to do it legally.'"). In fact, hours before signing Executive Order No. 13,769, President Trump had belied its "territorial," non-religious focus by publically stating that Christians from the seven impacted nations would be given priority as refugees. *Aziz*, 2017 WL 580855, at *4. This unapologetically transparent record of the invidious motivation behind the Executive Order undermines the Government's *post hoc* efforts to attribute a lawful purpose to its action.

As U.S. District Judge Brinkema of the Eastern District of Virginia concluded in enjoining the original Executive Order as violative of the establishment clause, "[t]he 'Muslim ban' was a centerpiece of the president's campaign for months, and the press release calling for it was still available on his website as of the day this Memorandum Opinion is being entered." *Aziz*, 2017 WL 580855, at *8. The Court thus found that there was "direct evidence" that the Executive Order was an attempt to find a legal way to impose a ban on Muslims entering the United States. *Id.* at *9. The Government, however, cannot circumvent the Constitution merely by "deferring to the wishes or objections of some fraction of the body politic." *Cleburne*, 473 U.S. at 448.

After multiple courts, including the Eastern District of Virginia, stayed or preliminarily enjoined the first iteration of the order, President Trump signed the revised version that is now before the Court. Although the Executive Order at issue here eliminates some of the more egregious provisions of the prior order (e.g., it no longer applies to lawful permanent United States residents), it continues to be the means for implementing the anti-Muslim animus that gave rise to the first order. It still targets only Muslim-majority countries, and contains no legitimate justification for broadly suspending entry into the United States of those born in those countries. In fact, Stephen Miller, a senior advisor to President Trump, declared that the Executive Order contains only "minor technical differences" from the prior order in an attempt to respond to the "flawed" and "erroneous" judicial rulings striking the first order down, and that it will "fundamentally have the same policy outcome for the country."[11]

It is therefore hardly surprising that the court below and the Federal District Court of Hawai'i have concluded that the new Executive Order is also motivated by impermissible animus towards Muslims. *See Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673, at *13 (D. Haw. Mar. 15, 2017) (analyzing statements of President Trump and his administration and determining that the current Executive Order remained motivated by "religious animus").[12]

President Trump campaigned on a promise that he would institute a "Muslim Ban," and both he and his advisors have publically stated that the Executive Order

[11] Fox News, *Trump adviser says new travel ban will have 'same basic policy outcome'* (Feb. 21, 2017), http://www.foxnews.com/politics/2017/02/21/trump-adviser-says-new-travel-ban-will-have-same-basic-policy-outcome.html.

[12] In striking down the Executive Order as violative of the Establishment Clause, neither court reached the question of whether the Executive Order also violates the equal protection component of the Fifth Amendment.

is an attempt to accomplish that ban while subverting the courts' ability to subject it to Constitutional review. This Court should take the President and his advisors at their word.

C. The Government's Stated Basis for the Executive Order, National Security, Is a Pretext for Impermissible Animus Towards Muslims.

Given the clear animus towards Muslims that gave rise to the Executive Order, the Supreme Court's jurisprudence requires careful judicial examination of the stated justification for the Order even if the Court determines that the Executive Order is subject to rational basis review. That the Government's justification for this policy is national security does not diminish this Court's duty to ensure the policy is constitutional. *Washington v. Trump*, 847 F.3d 1151, 1163 (9th Cir. 2017) ("[F]ederal courts routinely review the constitutionality of—and even invalidate—actions taken by the executive to promote national security, and have done so even in times of conflict."). Any meaningful review demonstrates that the purported national security justification for the Executive Order is merely a pretext for anti-Muslim animus.

The Executive Order suspends immigrant and refugee entry into the United States of aliens from Syria, Iran, Libya, Sudan, Yemen, and Somalia for 90 days. Section 1 of the Order is titled "Policy and Purpose." There, it states that "[s]ince 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States." Executive Order, Section 1(h). Remarkably, the Executive Order then identifies only **one** such individual who was born in any of the affected countries.[13] It goes on to state that "[t]he Attorney General has reported to me that more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation." However, the Executive Order makes no effort to tie these general claims about terrorism to the specific Muslim-majority countries in the Executive Order.

In fact, since 1975, not a single American has been killed in a terrorist attack by a person born in any of the six countries.[14] The impacted countries also are unrelated to terrorism-related arrests. For instance, not a single immigrant from Libya or Syria, two countries targeted by the Executive Order, was arrested on terrorism charges between 1975 and 2015. In contrast, nine immigrants from Croatia and eleven from Cuba were arrested on terrorism-related charges in that timespan.[15]

Nor can the Executive Order's singling out of the designated Muslim countries be justified, as Section 1(d) purports to do, by citing their supposedly questionable vetting procedures for immigrants. In a March 6, 2017 interview with CNN, Secretary of Homeland Security John Kelly admitted that there are an additional "13 or 14 countries, not all of them Muslim countries, not all of them in the Middle East, that have questionable vetting procedures . . . ."[16]

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[13]The Order also identifies two individuals from Iraq, a country not subject to the blanket prohibitions contained in the revised Order.

[14] Alex Nowrasteh, *Guide to Trump's Executive Order to Limit Migration for "National Security" Reasons*, Cato Institute (Jan. 26, 2017), https://www.cato.org/blog/guide-trumps-executive-order-limit-migration-national-security-reasons.

[15] *Id.*

Moreover, recently publicized documents from the Department of Homeland Security ("DHS") contradict the security justification for the Executive Order. In fact, one document is titled "Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States."[17] In analyzing terrorist attacks since 2011, it finds no relationship between those attacks and citizenship.

> [A]t least 82 primarily US-based individuals . . . died in the pursuit of or were convicted of any terrorism-related federal offense inspired by a foreign terrorist organization . . . . Of the 82 individuals we identified, slightly more than half were native-born United States citizens. Of the foreign born individuals, they came from 26 countries, with no one country representing more than 13.5 percent of the foreign-born total.[18]

The report further found that "[f]ew of the [i]mpacted [c]ountries [h]ave [t]errorist

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[16] Daniella Diaz, *Kelly: There are '13 or 14' more countries with questionable vetting procedures*, CNN.com (Mar. 7, 2017), http://www.cnn.com/2017/03/06/politics/john-kelly-travel-ban-muslim-countries/.
[17] Rick Jervis, *DHS memo contradicts threats cited by Trump's travel ban*, USA Today (Feb. 24, 2017), http://www.usatoday.com/story/news/2017/02/24/dhs-memo-contradict-travel-ban-trump/98374184/.
[18] *Id.* at 1.

[g]roups that [t]hreaten the West."[19]

Another DHS memorandum undercuts the other purported justification for Executive Order: the need to enhance screening procedures for individuals traveling from the six targeted countries. The memorandum questions the link between screening practices in general and preventing terrorism, concluding that "most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns."[20]

In fact, the Executive Order's reference to terrorist activities by the lone native of an affected country—a Somalian refugee convicted on terrorism charges—proves the point. Executive Order, Section 1(h). Mohamed Osman Mohamud came to the United States as a child refugee at the age of five; however, his arrest on terrorist-related charges occurred when he was 19-years old.[21] As the DHS memorandum notes, "screening and vetting officials" are not likely to be able to account for radicalization that occurs 14 years after entry as a child.

Taken together, these DHS memoranda demonstrate the pretextual nature of the national security justification for the Executive Order. The DHS does not find citizenship to be a likely indicator of future terrorist activity and does not find enhanced screening procedures to be an effective method of preventing terrorists from entering the country. Thus, an Order that imposes an immigration ban on the basis of citizenship (as a pretext for religion) in order to enhance future screening processes flies in the face of the assessment of the very government agency charged with protecting national security from terrorist threats.

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[19] *Id.* at 2.
[20] *TRMS Exclusive: DHS document undermines Trump case for travel ban*, MSNBC (Mar. 2, 2017), *available at* http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban.
[21] Lynne Terry, *Family of Portland's bomb suspect, Mohamed Mohamud, fled chaos in Somalia for new life in America*, The Oregonian (Dec. 4, 2010), http://www.oregonlive.com/portland/index.ssf/2010/12/suspect_in_portland_bomb_plot.html.

The Executive Order does not bear any rational relationship to concerns about national security or any other legitimate government interests. Instead, as was made clear by the President's statements prior to signing the Order, it is motivated by religious animus towards Muslims. Such a law cannot be allowed to stand in our society.

III. CONCLUSION

For the foregoing reasons, the district court's preliminary injunction should be affirmed.

DATED: April 19, 2017

Respectfully submitted,

/s/ Lynne Bernabei

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This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced typeface (Times New Roman) in 14-point. It was prepared using Microsoft Word. It complies with the type-volume limits of Fed. R. App. P. 29(a)(5) because it contains 6,446 words, which is half of the 13,000 words allowed for principal briefs under Fed. R. App. P. 32(a)(7)(B)(i).

/s/ Lynne Bernabei
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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Lawyers' Committee for Civil Rights Under Law
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: [signature] Date: April 18, 2017

Counsel for: Lawyers' Committee for Civil Rights

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No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Center for Reproductive Rights
(name of party/amicus)

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Counsel for: Center for Reproductive Rights

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No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Southern Coalition for Social Justice
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
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1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: ______________________ Date: April 18, 2017

Counsel for: Southern Coalition for Social Justice

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Pursuant to FRAP 26.1 and Local Rule 26.1,

National Center for Lesbian Rights
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If yes, identify any trustee and the members of any creditors' committee:

Signature: [signature] Date: April 18, 2017

Counsel for: National Center for Lesbian Rights

CERTIFICATE OF SERVICE

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I certify that on April 19, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Alan R. Kabat
(signature)

April 19, 2017
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Judge David L. Bazelon Center for Mental Health Law
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: ______________________ Date: April 18, 2017

Counsel for: Judge David L. Bazelon Center

CERTIFICATE OF SERVICE

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Alan R. Kabat
(signature)

April 19, 2017
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

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Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chicago Lawyers' Committee for Civil Rights Under Law
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: [signature] Date: April 18, 2017

Counsel for: Chicago Lawyers' Comm. for Civil

CERTIFICATE OF SERVICE

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Alan R. Kabat
(signature)

April 19, 2017
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Mississippi Center for Justice
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: Beth L. Orlansky, Advocacy Director Date: April 18, 2017

Counsel for: Mississippi Center for Justice

CERTIFICATE OF SERVICE

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I certify that on April 19, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Alan R. Kabat — (signature)

April 19, 2017 — (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 17-1351 Caption: International Refugee Assistance Project et al. v. Trump et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Washington Lawyers' Committee for Civil Rights and Urban Affairs
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: ______________________ Date: April 18, 2017

Counsel for: Washington Lawyers' Committee

CERTIFICATE OF SERVICE

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Alan R. Kabat (signature) April 19, 2017 (date)